

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Ivan L. Mendez

v.

Civil No. 12-cv-208-JL

A Big International Criminal
Organization and Their Connected
Wired Soldiers

REPORT AND RECOMMENDATION

Before the court is plaintiff Ivan L. Mendez's complaint (doc. no. 1), alleging violations of his civil rights. Mendez's request for in forma pauperis status in this case (doc. nos. 2, 4 and 6) has been granted (doc. no. 7), and the matter is presently before this magistrate judge for preliminary review to determine, among other things, whether the complaint states any claim upon which relief might be granted. See 28 U.S.C. § 1915A(a); United States District Court District of New Hampshire Local Rule 4.3(d)(2). As explained herein, the court recommends that the September 20, 2012, order (doc. no. 7) granting Mendez in forma pauperis status in this matter be vacated, and that this action be dismissed unless Mendez pays the full filing fee.

The Prison Litigation Reform Act ("PLRA") contains a "three strikes" rule providing that:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Plaintiff Mendez has been found, by a number of federal district courts, to be subject to § 1915(g)'s "three strikes" bar. See, e.g., Mendez v. This Criminal Org. & Their Connected, Wired Soldiers, No. 2:13-cv-00087-CDJ (E.D. Pa. Jan. 9, 2013); Mendez v. Unnamed, No. 1:12-cv-2806-JEC (N.D. Ga. Oct. 11, 2012); Mendez v. A Big Int'l Criminal Org., No. 2:12-cv-01235-SRB-DKD (D. Az. July 5, 2012); Mendez v. Big Int'l Criminal Org., No. 9:12-cv-00093-DLC (D. Mont. June 29, 2012); Mendez v. Unknown, No. 2:12-cv-05032-UA-DTB (C.D. Cal. June 21, 2012); Mendez v. Dep't of Corr., No. 1:12-cv-00631-LPS (D. Del. June 8, 2012).

The court finds no reason not to credit the findings of those courts and apply their holdings in this matter. Nor does anything in the complaint provide any basis upon which this court can find that Mendez is in any danger of imminent physical

harm to allow Mendez to proceed under the exception to § 1915(g)'s "three strikes" rule. Accordingly, Mendez should not be permitted to proceed in forma pauperis in this matter.

Conclusion

For the foregoing reasons, the order granting Mendez in forma pauperis status in this matter (doc. no. 7) should be vacated, and Mendez should be required to pay the \$350 filing fee in order to avoid dismissal of this action. The court further recommends that the complaint (doc. no. 1) be dismissed without prejudice if the \$350 filing fee is not paid within thirty days of the date that this report and recommendation is approved.

Any objections to this report and recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). Failure to file objections within the specified time waives the right to appeal the district court's order. See United States v. De Jesús-Viera, 655 F.3d 52, 57 (1st Cir. 2011), cert. denied, 132 S. Ct. 1045 (2012); Sch. Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010) (only issues fairly raised by objections to magistrate judge's report are subject to review by district

court; issues not preserved by such objection are precluded on appeal).



Landya B. McCafferty
United States Magistrate Judge

January 25, 2013

cc: Ivan L. Mendez, pro se

LBM:jba